

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * CIVIL ACTION
THE ESTATE OF YARON UNGAR, * 00-105L
et al *
VS. * JUNE 15, 2010
THE PALESTINIAN AUTHORITY, *
et al * PROVIDENCE, RI
* * * * *

HEARD BEFORE THE HONORABLE RONALD R. LAGUEUX
SENIOR DISTRICT JUDGE
(DEFENDANTS' OBJECTION TO MAGISTRATE JUDGE'S MEMO AND
ORDER)

APPEARANCES:

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1 THE COURT: Good afternoon, everyone.

2 The matter is here on the objections or appeal
3 of the Defendants to a memorandum and order granting
4 Plaintiffs' motion for a payment decree. It was issued
5 May 12, 2010.

6 I'll hear from Defendants first. Will the
7 attorneys identify themselves, first of all.

8 MR. STRACHMAN: David Strachman for the Ungar
9 family, the judgment creditors.

10 MR. HIBEY: Good afternoon, your Honor. Richard
11 Hibey for the Palestinian Authority and the PLO.

12 MR. SHERMAN: Deming Sherman also for the
13 Palestinian Authority and the PLO.

14 THE COURT: All right. I'll hear you first,
15 Mr. Hibey.

16 MR. HIBEY: Hibey. Yes. Thank you.

17 THE COURT: Pronounced Hibey?

18 MR. HIBEY: Hibey, yes, your Honor. Thank you
19 very much.

20 THE COURT: All right. I'll get it right after
21 this. Go ahead.

22 MR. HIBEY: Your Honor, I'd like to begin by
23 making certain prefatory remarks that I think set the
24 context for what will follow. I'll then make
25 essentially three points and close by, of course,

1 answering any questions that the Court might have.

2 We are in a state of changed circumstances. At
3 the time of the hearing before Magistrate Judge Martin,
4 the judgment was not in question. Now it is.

5 The First Circuit changed the landscape.
6 Magistrate Martin, in our view, did not take that into
7 consideration, did not appreciate what the mandate
8 articulated, which was for a full-throated
9 consideration of a myriad of factors including, among
10 others, the amount of the judgment, which factors have
11 been described by the Court of Appeals as substantial
12 for consideration.

13 We -- I use the word "we" to embrace both the PA
14 and the PL0, but I might say the PA and PL0 together
15 -- are a foreign judgment debtor with no assets or
16 income in Rhode Island.

17 In this context, we come before the Court
18 because of an unprecedented use of the Rhode Island
19 Creditors Rights statute that was invoked and is the
20 subject of the Report and Recommendation of the
21 magistrate judge.

22 THE COURT: In the state courts, I heard many of
23 these. And in the state courts, they're called
24 supplementary proceedings in aid of a judgment where
25 the writ of execution has been returned unsatisfied.

1 So the reference is to supplementary proceedings. This
2 is statute 9-28-3 --

3 MR. HIBEY: Yes.

4 THE COURT: -- that we're referring to. I had
5 never heard it referred to as a request for a payment
6 decree. That's new language to me. I know what
7 Plaintiffs are seeking. They're seeking supplementary
8 proceedings. They're seeking an order of the Court for
9 partial payment to be made.

10 MR. HIBEY: Yes, your Honor. That is correct.
11 The language I have used is perhaps not as artful by
12 virtue of the fact that my appearances in Rhode Island
13 can be described as rare, indeed. But if you'll
14 indulge me, I think I will join the issue very quickly
15 to the points that I'd like to bring to your attention
16 in this argument.

17 We were notified yesterday afternoon that this
18 proceeding would take place, not on the order to show
19 cause, which was a procedure that was invoked earlier
20 in the month, but on an as yet not fully briefed, if
21 you will, Rule 72 objection. And we anticipated filing
22 our reply on June 22nd, and we ask that we be allowed
23 to do so even though you're taking the argument today.

24 THE COURT: Well, the order to show cause may
25 well be moot depending on what I rule today.

1 MR. HIBEY: Yes, your Honor.

2 It's the briefing of the 72, this motion before
3 you, that we'd like to complete that I'm asking for
4 that indulgence on your part.

5 The errors that I will argue here, your Honor,
6 are these: That under Federal Rule, Civil Rule of
7 Procedure 69, it provides for the enforcement of a
8 judgment of money through proceedings in aid of a
9 judgment or writ of execution as provided for by state
10 law. That state law necessarily, in this case, is the
11 law of Rhode Island. And the law that was invoked by
12 the Plaintiffs to bring us before the Court in the
13 initial instance is, as you had said earlier, 9-28-3.

14 We submit that the magistrate erred in applying
15 9-28-3 to the PA and the PL0. They are not individuals
16 and our contention is, based upon a reading of the
17 statute and of the case law, that only individuals may
18 be subject to a citation proceeding. We have found no
19 Rhode Island decision holding to the contrary. A case
20 entitled Murphy decided in the mid-'70's is relied upon
21 heavily by the Plaintiffs in their brief in opposition
22 to this objection. But we don't believe, your Honor,
23 that the Murphy case stands for the proposition that
24 this would be an example of 9-28-3 being applied to a
25 situation in which the judgment debtor is a non-human

1 party.

2 There's no basis, therefore, for ordering under
3 Section 3 a non-person party to be subjected to the
4 order in a citation proceeding. The situation is
5 compounded here, in our view, by the fact that the PA
6 and the PLO in addition not to be -- in addition to
7 being non-person parties, have no assets in Rhode
8 Island; no income in Rhode Island; no activity in Rhode
9 Island; and, therefore, should not be required under
10 Section 3 to be the recipient of a citation order.

11 Now, I want to make it clear that this is not an
12 argument for the proposition that this Court has no
13 jurisdiction over the PA and the PLO. That is history.
14 That has been established. We are not plowing over old
15 ground in that respect. However, it is, we think, the
16 law that the nature and extent of the Court's
17 authority, if you want to call it jurisdiction,
18 jurisdiction to initiate a citation order, it must
19 follow the dictates of the law of the State of Rhode
20 Island. And we think that, in that instance, the
21 magistrate went well beyond what the law in Rhode
22 Island provides.

23 So that what we're trying to say is that
24 jurisdiction over the Defendants does not mean that the
25 Rhode Island courts have the power to order

1 out-of-country defendants to bring into the country
2 money to pay a judgment.

3 Now, that is the fundamental proposition of
4 misapplication, as far as we're concerned, of 9-28-3 to
5 this particular case.

6 9-28-3 as a citation provides in pertinent part,
7 through that section and the sections that follow, 3,
8 4, 5, 6, 7, for the examination of human beings as to
9 the question of whether they have the ability out of
10 their income to pay on a judgment resulting, perhaps,
11 in a citation ordering them to do so.

12 We don't have that situation with these
13 Defendant debtors, judgment debtors in this instance.

14 Now, we don't see where Section 3 is in any
15 circumstance, therefore, and with no cases to support
16 the opposite conclusion, where Section 3, therefore,
17 applies to these non-person parties.

18 The third proposition is this: If the statute
19 applies, if Section 3 is determined to be applicable
20 here, then the financial ability of the PA and PL0 to
21 pay on the judgment must be explored. The statutory
22 scheme says, basically, under Section 1 of 9-28, that
23 is a reach and apply statute. I think that's what it's
24 called around here. It is a -- to reach and apply
25 assets and there's no question but that that is what

1 occurs under Section 1. There's no inquiry. It's a
2 question of identifying an asset and taking it.

3 Whereas, as we have said, under Section 3, that is not
4 the case. Under Section 3, you have to look to what
5 that party's income is and to inquire under examination
6 what that party's financial circumstances are, that
7 party being, in the language of the statute, his or her
8 financial circumstances, and his or her ability to pay.
9 And consideration is taken as to what your assets are
10 and what your debts are and what your income is and
11 netting it out and trying to come up with an equitable
12 determination as to whether a person has the ability to
13 pay on that judgment or not. And if so, in what
14 amounts.

15 We had no exploration of the financial ability
16 in this hearing. Before Judge Martin, he took no
17 evidence on the question of the financial ability to
18 pay for good and sufficient reason. Prior to the
19 hearing, both in pleadings and in a telephone
20 conference that the magistrate judge held with the
21 parties, it was made abundantly clear by the
22 Plaintiffs' counsel, Mr. Strachman, that there would be
23 no requirement that the parties -- that the Defendants
24 address the issue of the ability to pay, that this was,
25 I think in the language of a footnote in his original

1 pleadings, this was simply a hearing for argument. I
2 think I've got that easily paraphrased and maybe close
3 to a quote. And then the judge confirmed that in a
4 subsequent telephone conference with the parties.

5 When we got to hearing, Magistrate Judge Martin
6 pointedly raised the issue with Mr. Strachman, who, at
7 this point, was beginning to argue about the ability of
8 the Defendants to pay the judgment debt or evading the
9 judgment debt or refusing to pay the judgment debt.
10 Certainly that theme ran through his remarks. And the
11 magistrate judge at around page 15 of the hearing
12 transcript said, Wait a minute, isn't that a conflict
13 between what you were telling us in your brief and what
14 you told us also in the telephone conference that I
15 alluded to.

16 The record is not exactly crystal clear as to
17 what the response is because the response was diffuse.
18 I'll leave it to the record to report with accuracy
19 exactly what was said. But it was referenced for a
20 number of pages thereafter because, from what we could
21 tell, the magistrate judge was troubled by the fact
22 that we were not expected and he understood he was not
23 going to receive any evidence from us on the question
24 of our ability or inability to pay on this judgment.

25 When the magistrate judge issued his ruling, he

1 did not take that issue up. He ignored it. And I
2 think that is an appropriate word to describe what he
3 did because, quite to the contrary, he began to cite
4 from affidavits that had been filed in the Knox case in
5 the Southern District of New York in which the prime
6 minister of Palestinian Authority and a high official
7 of the Ministry of Finance attempted to explain to the
8 magistrate judge who was attempting himself to
9 ascertain the amount of a bond that was a condition of
10 the vacatur of the default judgment that had been
11 entered by Judge Marrero in New York. Judge Marrero
12 had a \$193,000,000 default judgment. We sought
13 vacatur. He granted it. And one of the conditions of
14 vacatur was that we were to meet a bond. That was the
15 subject of litigation which we attempted to put before
16 the Court, the fiscal situation of the PA and PLO as of
17 that time of the hearing and I would put that in the
18 year 2008. The magistrate judge made a Report and
19 Recommendation for the payment of a bond and that was
20 then forwarded to the judge in -- the trial judge,
21 Judge Marrero. The matter was not further litigated
22 because the case was disposed of.

23 The point I'm trying to make is this: Number
24 one, the fiscal -- the financial condition of the
25 Palestinian Authority, the PLO in 2008 was discussed

1 against the background of a letter from the Department
2 of State which expressed not a suggestion of interest
3 but an expression of concern about this and other cases
4 as it impacted the political and financial viability of
5 the Palestinian Authority.

6 The second point to be made with respect to the
7 Knox matter, which the magistrate judge in this case
8 overly embraced, if you will, is that this was a
9 discussion about what a bond would be as a condition of
10 vacatur. What we have here is the magistrate judge
11 examining the affidavits or declarations of the prime
12 minister and a member of the Ministry of Finance and
13 deciding on the basis of that information, which was
14 easily a year-and-a-half or more old at the time he got
15 it, that the PA and the PLO could afford to pay. Not a
16 bond where you put up a bond and get a surety or a bank
17 to stand behind it, but to pay fully the amount of this
18 tremendous judgment of \$116,000,000 plus interest. We
19 learned that upon the reading of the magistrate judge's
20 Report and Recommendation.

21 We believe that's error and it impacts the
22 fundamental fairness of the very proceeding over which
23 he was presiding. This rises to the level, in our
24 view, the due process violation.

25 So in the end, your Honor, what we have here is

1 a situation in which the wrong statute was invoked to
2 bring about a result that is not countenanced by that
3 statute and predicated upon an interpretation of
4 information that was skewed to say the least.

5 The magistrate judge was told repeatedly this is
6 a three-and-a-half billion dollar budget that the
7 Palestinian Authority has. There was no refinement of
8 that statement. Well, we wouldn't expect one from our
9 opposition, but certainly what we would have a right to
10 expect is that the judge understood the declarations
11 that were put forth by the Plaintiffs from the Knox
12 case. And we had, I think, also a right to understand
13 that the issue of the ability to pay, if Section 3 is
14 the right section, that the issue of the ability to pay
15 would have been something that we would have an
16 opportunity to present on; and lastly, to understand
17 that the declarations that were offered said far more
18 than what was reported in the Report and
19 Recommendation.

20 These declarations stand for the proposition
21 that the PA is broke, has always been broke, is a
22 deficit operation. The numbers may be large but when
23 you're losing \$1.65 billion a year with that number
24 growing each year, that is a factor that we would
25 expect, in fairness, would be taken into account where

1 a Section 3 proceeding is initiated. That didn't
2 happen here and we feel, therefore, that the judge,
3 magistrate judge erroneously came to a set of
4 conclusions based upon a reading of -- improper reading
5 of cases.

6 All the cases that he cited were turn-over
7 cases. All the cases that he cited had to do with
8 conduct that originated in the jurisdiction, the
9 sequestering of assets, moving them out of the
10 jurisdiction and the like.

11 None of that happened here because at no time
12 has there been any asset, any income of the PA or the
13 PLO that has flowed through this state. This case
14 could have been brought in North Dakota because that's
15 the breadth of the ATA's jurisdiction. But where due
16 process kicks in, if you will, within the meaning of
17 the Rules of Procedure, Rule 69 and the proper
18 application of the state statutes, there you have a
19 more defined configuration of what the nature of the
20 authority of the court is. And the nature of the
21 authority of this Court is to find, essentially, by the
22 statutes of Rhode Island. When I say "this Court," I
23 mean the court that is administering a claim for a
24 creditor's rights. And it is the statutes of the State
25 of Rhode Island which govern.

1 Now, if there are any questions, your Honor, I'd
2 be happy to answer them.

3 THE COURT: No, I don't.

4 MR. HIBEY: Thank you.

5 MR. STRACHMAN: Good afternoon, your Honor.

6 THE COURT: Mr. Strachman.

7 MR. STRACHMAN: Your Honor, the context of this
8 case is very simple. And that is six years after a
9 judgment that was long-fought, after hundreds of
10 pleadings, four years, multiple decisions by your
11 Honor, appeals to the Court, First Circuit, we still
12 have a defendant, two defendants who come into this
13 court and brazenly abrogate to themselves the right to
14 determine which orders they're going to comply with,
15 which ones they won't comply with. And in fact,
16 virtually every order that's ever been issued by this
17 Court, from discovery to filing an answer to
18 post-judgment proceedings, they have thrown up
19 roadblocks, they have not complied with, and they have
20 manipulated and twisted the procedures to suggest that
21 there's something wrong with the Court, Magistrate
22 Judge Martin, the judgment of creditors. It's
23 everyone's fault but theirs, and they have decided that
24 they can determine when they comply with an order.

25 If they have a problem with Judge Martin's order

1 to pay \$15 million on June 1st, they have remedies.
2 The remedy is to take an appeal, as they've done, to
3 pay the judgment and to comply to seek a stay. They
4 haven't done any of that. They've decided on their own
5 what they're going to do. And instead, defying the
6 Supreme Court and the case that we cite in our brief,
7 the Maness case, which says very clearly, if you
8 disagree with an order, you can't decide on your own
9 you're not going to comply with it. You have to comply
10 with it.

11 They could have also sought a stay. Your Honor
12 granted them the right to seek a stay in 2004 in the
13 summer and said that they could put up a certain amount
14 of security. Six years have gone by. They refused to
15 put up a stay. They've decided on their own what
16 they're going to do by manipulating what they perceive
17 is the type of decision that Magistrate Judge Martin
18 ruled on and whether the memorandum and order that he
19 gave was really just a Report and Recommendation. We
20 have an abundance of cases that we've shown in our
21 brief that indicate that post-judgment proceedings
22 referred to a magistrate judge are akin to pretrial
23 proceedings and should be ruled on in the same fashion
24 and the magistrate judge has authority to issue orders.

25 However, what we've indicated in our brief is

1 that out of an abundance of caution in order so that
2 that Ungar orphans and their families don't have to
3 traipse through the Court of Appeals yet again on this
4 issue, that the Court look at and review this matter
5 under the clear error standard so that the Court will
6 look at this case as if it was a Report and
7 Recommendation. And in fact, there are courts, and
8 we've indicated that that's just what the Bache Halsey
9 case ruled on and said that even though it wasn't
10 appropriate to do so, out of an abundance of caution
11 the court would do so to avoid more procedural
12 wrangling and maneuvers.

13 And in that light, Judge, we would also ask that
14 although the Court scheduled this hearing today and we
15 are grateful for the Court scheduling this hearing,
16 especially on a fairly speedy basis, it's only helpful
17 to the Ungars, the problem that we confront ourselves
18 with is that it is our understanding of the Local
19 Rules, the Defendants do have the right to file a
20 reply. And if they don't file a reply, they're going
21 to be allowed or they're going to try to drive a truck
22 through a procedural impropriety that they will allege.

23 So we have suggested that if the Court were
24 inclined to not make a decision today and to accept
25 their reply brief, which is due on the 22nd as we've

1 indicated in our correspondence to the Court about the
2 scheduling of this hearing, so that we remove every
3 issue that could possibly be before the Court of
4 Appeals or any other court with respect to this issue,
5 to this proceeding.

6 I also request that the Court take notice that
7 this Court several years ago granted a creditors bill
8 with the participation of the Defendants under the very
9 same Rhode Island collection proceedings.

10 Unfortunately, the Defendants have refused to honor
11 that creditors bill and you may recall that the Court
12 ordered the Defendants' Investment Fund that Yasar
13 Arafat himself runs -- ran, rather, called the
14 Palestine Investment Fund, the Court ordered the
15 Defendants' interest in that fund be transferred to the
16 judgment creditors. They failed to comply. They
17 refuse to comply. Their surrogates have fought us in
18 the Second Circuit in Connecticut and New York and
19 other locations.

20 So the Court has already addressed in large
21 measure whether the Court can take post-judgment
22 collection action against an out-of-state judgment
23 debtor.

24 With respect to their argument, Judge,
25 concerning evidence, it's striking and, frankly, only

1 these Defendants could raise an argument in a Federal
2 Court and say that the magistrate judge did not have
3 sufficient evidence in front of it when it made a
4 decision when the evidence that we provided in the very
5 first pleading requesting a citation order is the very
6 affidavit of Hatam Yousef, who is the Director General
7 of their Customs, Excise and VAT department for the
8 Ministry of Finance. He's the gentleman who previously
9 provided an affidavit indicating what their income was.
10 He's the guy who collects their income. We offered
11 that to the Court. We provided it to the Court.

12 And Magistrate Judge Martin, despite our
13 suggestion that we did not have the burden of proof to
14 prove that they had the ability to pay but the burden
15 is on the judgment debtors to explain why they are not
16 paying this six-year-old judgement, the magistrate
17 judge said very clearly on page nine of his decision
18 that it's unnecessary to really resolve this issue.
19 The Court is satisfied that we met the burden of proof.
20 And the Court went through very carefully Mr. Yousef's
21 affidavit, the PLO or PA's own employee, and also
22 looked at the very decision which gave rise to this
23 corpus of funds. And that is from the Israeli District
24 Court.

25 What's also anomalous here is that we have not

1 asked them to reach into their pocket and to pay us.
2 For several years beginning in September 2008, the
3 Israeli District Court has segregated their funds and
4 have put funds away to satisfy down the road this
5 judgment. They've lived without these payments for two
6 years. They've now collected and pooled together over
7 a hundred million dollars, precisely the amount of
8 money to satisfy this judgment.

9 Judge Martin's order is, frankly, income past,
10 present and future neutral to them unlike a judgment
11 debtor on the formal special cause calendar or in
12 district court who literally has to reach into his
13 pocket to produce funds to pay an order to satisfy a
14 judgment. These Defendants don't have to do that at
15 all. All they have to do is front the first \$15
16 million to us, and immediately thereafter, within days,
17 we have to arrange to stipulate the release of funds in
18 Israel. So when they pay us \$15 million, within days
19 we'll get \$15 million back and that procedure would
20 follow until the entire judgment is paid.

21 So this idea that there wasn't an evidentiary
22 hearing is wrong. Mr. Hibey, I believe, was at the
23 telephone conference that we had on December 31 with
24 Magistrate Judge Martin in which we discussed what that
25 hearing would look like. I believe the hearing was on

1 January 13th. We previously informed the Court and we
2 informed the Court again, we provided all the evidence
3 that we felt we needed. Nothing prevented the
4 Defendants from bringing in witnesses, from attempting
5 to disprove statements that were made in their own
6 affiant's affidavit, or the fact that the funds had
7 been segregated already from their income to pay this
8 judgment. They refused to do so. They took a gamble.
9 They felt that the Court would be wowed by their
10 procedural and legal arguments and that they could from
11 the outside try to attack any ruling, anticipated
12 ruling from Judge Martin. They're stuck with that
13 record.

14 They have and they purposely refused to bring
15 witnesses to Rhode Island. They could have attached
16 affidavits. They could have attached items and, in
17 fact, they did provide a significant amount of
18 information to the Court in their proceedings -- excuse
19 me, in their filings. So I find that argument somewhat
20 specious.

21 In conclusion, your Honor, I would simply ask
22 that the Court confirm that the judgment -- the
23 memorandum and order is appropriate and that the Court
24 use the higher standard under a Report and
25 Recommendation only for the purpose of avoiding future

1 delays and future aggravation. The Ungars have been
2 through enough with these Defendants. It's time that
3 they pay the piper. It's time that they comply.

4 Judge Martin's decision, quite honestly, is I
5 think the decision now, leading decision in Rhode
6 Island on the citation statute. And it's extremely
7 well thought-out, very detailed, and I urge the Court
8 to uphold it.

9 Lastly, the idea, Judge, that the courts of
10 Rhode Island, in Superior Court and in District Court,
11 don't issue citation proceedings against
12 non-individuals is not only contrary to the Murphy
13 case, in which a citation was issued 40 years ago, also
14 contrary to a citation from last year, which I just
15 happened to find very easily and I attached it to our
16 exhibits to show the Court, Judge Martin and now your
17 Honor, that, in fact, citations are issued against
18 corporations all the time.

19 Any cursory review, and certainly this Court has
20 far more experience than me on this issue, but anybody
21 appearing on the formal special cause calendar any day
22 of the week or the District Court any day of the week
23 will find that citations are issued every day against
24 corporations. To suggest that the Defendants can
25 litigate this case and take multiple appeals but simply

1 because they may be across state lines as Judge Martin
2 found, a Defendant who might be in Attleboro can evade
3 all the rulings of this Court, all the orders to pay
4 and to comply with the judgment simply because they're
5 out of state is outrageous. For the first time,
6 apparently, Mr. Hibey is conceding contrary to his
7 brief that jurisdiction is no longer an issue. They're
8 not conceding that issue. Certainly that issue was not
9 raised on appeal of the original judgment, but they
10 have sort of woven it through all of their arguments up
11 until this point and I'm happy that he now concedes
12 that.

13 Thank you, your Honor.

14 MR. HIBEY: Your Honor, may I address the Court?

15 THE COURT: All right.

16 MR. HIBEY: Just a couple of points, if I may,
17 and thank you for your indulgence.

18 This is a footnote in Mr. Strachman's pleading
19 numbered 468 filed in December 2009. This is the
20 motion for payment decree. On page six, Footnote 3,
21 (Reading:) In light of the nature of the relief sought
22 in this motion, no examination of the PA and PLO
23 regarding their assets need take place on January 13,
24 2010 hearing. Rather, that hearing should be utilized
25 simply for oral argument on the instant motion.

1 That's what was said in the pleading. That was
2 confirmed in the telephone conference that we both
3 alluded to and it troubled the magistrate judge in the
4 hearing, leaving us with the distinct impression that
5 this was an issue that needed to be addressed, only to
6 find out when we got the opinion or the report that
7 there was no reference to it whatsoever and that he had
8 marched on to embrace affidavits that said, basically,
9 what the condition of the PA was well over a year
10 before the hearing in this case.

11 Secondly, Mr. Strachman relied heavily in his
12 papers, the ones most recently filed with you, on a
13 case called Murphy against Charlie's Home Improvement
14 Company. And what he says in there is that we
15 ignore -- when we argued that we couldn't find one case
16 in which a corporate entity, a non-human entity had
17 been subjected to a Section 3 proceeding, we had
18 carefully decided not to cite the Murphy case.

19 Well, your Honor, the Murphy case is a very
20 interesting document or opinion. I will confess to you
21 I think it's loaded with ambiguity at best. 9-28-3 is
22 not cited anywhere in the opinion. 9-28-1 is.

23 Secondly, there were two defendant respondents
24 in this particular section of the opinion. One was a
25 man named Frank Gallo and Gal, as if a shortening of

1 Gallo, Construction Company. I'm advised that the fact
2 that it's called a company does not necessarily mean
3 it's incorporated. I don't know that. This case is
4 1976. It's hard to find out anything, especially on
5 the short notice we were proceeding.

6 But, your Honor, the focus of this case, which
7 we think is a 9-28-1 case, it says in part, (Reading:)
8 We find respondent's arguments concerning the order for
9 the petitioners to make periodic payments unpersuasive.
10 An order in supplementary proceedings adjudicates a
11 claim by the judgment creditor. Section 9-28-1. Not
12 3. One. And we take the position, your Honor, that
13 this is not any authority upon which you or any court
14 should rely for the proposition that 9-28-3 has been
15 used in cases involving non-human parties.

16 In fact, the case itself doesn't address the
17 fundamental issue before the Court and that is what is
18 appealable in circumstances where a judgment can be
19 modified, changed, revised.

20 Is it still a final judgment and should the
21 party understand it to be such and take his appeal
22 timely from that regardless of what might happen later
23 with revisions of the language of the judgment and the
24 Court of Appeals or -- excuse me, the Supreme Court of
25 Rhode Island, which I believe is the highest court here

1 said, Appeal. It's a final judgment, even though it
2 can be modified or revised.

3 So, your Honor, I think that's a perfect example
4 of what we're talking about here. And in terms of this
5 mechanism that's been suggested where we come up with
6 \$15 million, as if we could, and then that would cause
7 them to release funds, we don't know -- first of all, I
8 can tell you that had we understood that this was going
9 to be a hearing on financial ability that we would have
10 proffered evidence current at the time regarding the
11 financial situation of the PA. Most definitely it
12 would continue on the trend we have understood that it
13 would be deficit spending with huge holes in the
14 billions of dollars year in and year out. Had we
15 known --

16 THE COURT: That's because of the attachment.

17 MR. HIBEY: I'm sorry?

18 THE COURT: The attachment of the funds that
19 Israel turns over to the PA, that's been attached by
20 the Israeli courts.

21 MR. HIBEY: Yes. And to the detriment of the
22 people.

23 THE COURT: Well, that's not my issue. I don't
24 have that issue here.

25 MR. HIBEY: I respectfully suggest it is an

1 issue if you're going to use this 9-28-3. We have
2 never been given the opportunity to explain why we do
3 not have the ability to pay this and to explain, also,
4 how the sequestration of over a hundred million dollars
5 impacts the ability of the Palestinian Government to
6 attend to the needs of its people. So, yes, it is very
7 much so a concern for the Court.

8 THE COURT: I agree that you've raised
9 substantial questions about the applicability of 9-28-3
10 in these proceedings.

11 MR. HIBEY: Thank you, your Honor.

12 THE COURT: The magistrate judge entitled this
13 "Memorandum and Order," so he thought he was issuing a
14 binding order. I disagree. I have held several times
15 that the magistrate judge in these circumstances can
16 only issue a Report and Recommendation.

17 I sent this case to him. I didn't tell him
18 under what provisions of the Magistrate Judges Act I
19 was sending him this case because I always let the
20 magistrate judge make that initial determination of
21 whether it should be a Report and Recommendation or an
22 order and then I deal with it later , whether it's
23 based on an appeal or an objection to the Report and
24 Recommendation.

25 I'm satisfied that I will treat this as a Report

1 and Recommendation, because the magistrate judge does
2 not have power to issue a payment decree, which is what
3 he did here in this case.

4 So my review of his Report and Recommendation is
5 de novo. It's as if I'm hearing it for the first time
6 myself, and I can issue my own order in these cases.

7 I'm satisfied that the Defendants have raised
8 some substantial questions about the applicability of
9 9-28-3 to these types of proceedings or this case in
10 particular, and I'm not prepared to decide that now
11 because that may become moot later on.

12 What I'm going to do is defer deciding these
13 issues until after I have decided the Defendants'
14 motion to vacate the judgment under 60(b)(6). And
15 actually, I'm under a mandate from the Court of Appeals
16 to do that. They've sent it back to me for
17 reconsideration so I should not issue any kind of
18 payment order until I've made a determination that that
19 motion will be granted or denied. And so I am
20 deferring my decision on the applicability of 9-28-3.

21 We are on our way to getting that motion to
22 vacate decided after an evidentiary hearing. I've set
23 a schedule on it. The thing that troubled me for a
24 moment was, I think, the Plaintiffs deserve some
25 security, and it seems to me they have it by the

1 actions of the Israeli courts in granting a writ of
2 attachment, and there is now in the registry of the
3 country of Israel over one hundred million dollars
4 that's been withheld from payment to the Palestinian
5 Authority. So that's sufficient security.

6 If it turns out that the Israeli courts vacate
7 that attachment, then the Plaintiffs can come before me
8 and request that a bond be filed to protect the
9 Plaintiffs because they have for a long enough time
10 been stonewalled by these Defendants in attempting to
11 collect on this judgment. And this judgment was
12 affirmed by the Court of Appeals initially after I
13 entered it. Now we're dealing with a motion to vacate.
14 The Court of Appeals sent it back to me, and I will
15 deal with it after an evidentiary hearing.

16 So that's my ruling today. I am deferring
17 deciding the applicability of 9-28-3. I have a lot of
18 personal experience with that statute, and there are
19 other statutes which apply to non-individuals which may
20 shed some light on what 9-28-3 means when the words
21 "his" or "her" are used. In every case I ever heard,
22 and it's probably close to a hundred under that
23 statute, every one of the cases involved an individual.
24 I will tell you that. But that's just what has been
25 happening. That doesn't mean that the Legislature

1 intended that. They may have intended something else.
2 But that's a substantial issue that I will deal with at
3 the appropriate time.

4 What we should focus on right now is getting
5 your discovery done. And then in January, we will have
6 an evidentiary hearing and then I will decide whether
7 or not the motion to vacate this \$116,000,000 judgment
8 should be granted or not. One hundred sixteen million
9 sounds like a lot of money, but Magistrate Judge Martin
10 made a very thorough analysis of the damages suffered
11 by the several Plaintiffs from the death of Mr. Ungar,
12 and the Anti-Terrorism Act calls for trebling the
13 damages and that's why the judgment ended up being
14 high.

15 I still believe that my recollection is correct,
16 that the Court of Appeals in an opinion written by
17 Judge Lipez upheld the size of this judgement. I will
18 find that case.

19 MR. STRACHMAN: Your Honor, can I be heard?

20 THE COURT: What do you want to be heard on?

21 MR. STRACHMAN: Your Honor, it's my
22 understanding that by not ruling on this motion you're
23 effectively giving a stay to the judgment debtors when
24 they have not asked for a stay. They have not provided
25 the security required in Rule 60 for a stay. The funds

1 in Israel as described in the decision that we provided
2 to the Court as well as the description of the
3 proceedings in Israel are in no way immediately
4 available to us. In fact, just the opposite.

5 THE COURT: They give you security. They give
6 you security. And if for some reason you don't have
7 that security, you can ask for a bond to be posted
8 here.

9 MR. STRACHMAN: Defendants have contested that
10 and have appealed that and have brought that to the
11 Israeli Supreme Court where that issue is pending, and
12 then they've asked for a stay in the Israeli Supreme
13 Court pending your Honor's ruling. As Magistrate Judge
14 Martin ruled, they have not asked for a stay here in
15 six years. They have not provided the security. Six
16 years ago your Honor said that if they wanted a stay
17 before they went up to the Court of Appeals, they would
18 have to put up \$50 million in security.

19 Here we are six years later, we don't have that
20 50 million security. That money is not immediately
21 available to us in Israel. Not at all. It's being
22 held by a third party. They are contesting it. So if
23 your Honor rules --

24 THE COURT: You chose to go to Israel and get
25 the court to act there.

1 MR. STRACHMAN: We chose to go there.

2 THE COURT: I'm going to do what I have to do
3 and that court in Israel can do what it has to do. And
4 I'm deferring ruling on this right now.

5 MR. STRACHMAN: I understand.

6 THE COURT: It's not a stay. I'm not granting a
7 stay. I'm deferring my ruling. I could have taken it
8 under advisement and sat on it for a year.

9 MR. STRACHMAN: So did I understand your Honor
10 correctly to suggest that we then can ask that they put
11 up the security because right now there's no security
12 here in the United States? I guess we have a
13 difference of opinion as to the level of security that
14 provides in Israel. The proceedings have been stayed
15 in Connecticut, collection proceedings, at their
16 business partner's request. Same as is occurring in
17 New York. And here we are now litigating an
18 evidentiary hearing in January with, from our
19 perspective, virtually no security, none whatsoever.

20 The Court ruled six years ago if they wanted to
21 go to the Court of Appeals and wanted a stay, they
22 would at that time have to put up \$50 million. They
23 refused to do so.

24 We have less security now than the Court
25 initially anticipated and the effect of this, because

1 this -- I understand your ruling and I accept your
2 ruling, but the effect of the ruling is to keep us in
3 this unsecured situation.

4 THE COURT: I disagree that you're unsecured.
5 You're very well secured in Israel.

6 MR. STRACHMAN: But they're contesting the
7 security. In other words, when your Honor rules --

8 THE COURT: Let them contest it. That's up to
9 the Israeli courts. I told you if the situation
10 changes you can ask that a bond be put up, make an
11 appropriate motion and I'll hear it, but I won't hear
12 it this summer, I'll tell you that. I'm going to be
13 away all summer.

14 MR. STRACHMAN: Thank you, your Honor.

15 THE COURT: All right. Take a recess.

16 (Court concluded at 3:00 p.m.)
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C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, do hereby certify
that the foregoing pages are a true and accurate
transcription of my stenographic notes in the
above-entitled case.

/s/ Anne M. Clayton

Anne M. Clayton, RPR

June 17, 2010

Date